

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

DAVID EMILE COLBERT,  
Defendant.

No. 2:13-CR-0008-WFN-15

ORDER DENYING MOTION  
FOR REDUCED SENTENCE

Pending before the Court is Defendant's Motion for Reduced Sentence. ECF No. 4610. The Government agrees that he has exhausted his claim with the Bureau of Prisons [BOP].

Defendant must demonstrate that "(i) extraordinary and compelling reasons warrant such a reduction; or (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c) . . . and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g)." 18 U.S.C. § 3582(c)(1)(A). As Defendant is not over 70 years old, he must demonstrate that extraordinary and compelling reasons warrant reduction.

Defendant has not demonstrated extraordinary or compelling reasons warranting a sentence reduction. Although Defendant suffers from pre-existing conditions that put him at increased risk of serious illness or death from COVID-19, he declined the COVID-19 vaccine when presented with the opportunity to protect himself. The Government notes that he did accept the influenza vaccine which suggests that his decision not to take the COVID-19 vaccine was not based on allergy or other medical reasons.

1        Though the Court recognizes that multiple credible reports suggest that the BOP's  
2 early COVID-19 response had not successfully prevented the spread, the BOP has rolled out  
3 the vaccine to prisoners and has enacted measures to protect prisoners from serious illness  
4 or death caused by COVID-19. The danger of contracting COVID-19 does not constitute an  
5 extraordinary or compelling reason on its own.

6        Defendant's criminal history suggests he likely would not pose a danger to the  
7 community, though he does have a concerning history of firearm possession including  
8 during the offense of conviction. Defendant has not demonstrated extraordinary or  
9 compelling reasons supporting his release. The Court has reviewed the file and motion and  
10 is fully informed.

11 Accordingly,

12        **IT IS ORDERED** that:

13        1. Defendant's Amended Motion to Reduce Sentence Under 18 U.S.C. § 3582(c)  
14 (1)(A), filed June 8, 2021, **ECF No. 4610**, is **DENIED**.

15        2. The Government's Motion to Seal, filed July 13, 2021, **ECF No. 4621**, is  
16 **GRANTED**.

17        3. Defendant's Motion for Compassionate Release, filed September 8, 2020, **ECF**  
18 **No. 4555**, is **DENIED**.

19        The District Court Executive is directed to file this Order and provide copies to  
20 counsel.

21        **DATED** this 21st day of September, 2021.

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23 \_\_\_\_\_  
WM. FREMMING NIELSEN  
24 SENIOR UNITED STATES DISTRICT JUDGE

25 09-20-21